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 Attorney for Defendant
 MARCOS ANTONIO CRUZ

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF WASHINGTON
 (HONORABLE ROBERT H. WHALEY)

UNITED STATES OF AMERICA)	
)	CR-09-2087-RHW
Plaintiff,)	
)	MEMORANDUM IN SUPPORT
vs.)	OF MOTION TO COMPEL
)	INTERVIEW WITH GOVERNMENT
MARCOS ANTONIO CRUZ,)	INFORMANT
)	
Defendant.)	
)	

TO: JAMES A. McDEVITT, UNITED STATES ATTORNEY
 THOMAS J. HANLON, ASSISTANT UNITED STATES ATTORNEY

Upon proper request by a defendant, the government must make reasonable efforts to secure an informant's presence at a pretrial interview or at trial. If the informant is necessary to prove entrapment or the defense "otherwise shows a need for the information", the government must product the informant. United States v. Montgomery, 998 F.2d 1468, 1473 (9th Cir. 1993). The failure of the government to use reasonable efforts to produce the informant may result in a new trial or dismissal.

To invoke the government's duty to produce an informant, a need for the information must be established. Montgomery, 998 F.2d at 1473. This need arises where entrapment is the defense or where governmental misconduct is asserted. Where an informant played a significant role in the charged offense, the informant's testimony vital to the issue of guilt or innocence. Access to an informant is critical when the informant participates in the charged crime. Williams v. United States, 273 F.2d 781, 796 (9th Cir. 1965) (disclosing the

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Dismissal is an appropriate remedy if it is established that the government “purposefully saw to it that the confidential informant ‘disappeared.’” Id. The Court should dismiss the indictment if the governments fail to secure the informant for trial. No other remedy would be available since this request has been made prior to trial and prior to any conviction.

Respectfully submitted this 21st day of February, 2010.

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